IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 25 OF 2002.

Shri Laxman R. Shirvoikar,
75 years, Sai Ram Housing Board,
Gogal, Vidyanagar,
Margao, Goa. ... Appellant.

VERSUS

1. Divisional Railway manager,
South Central Railwlay,
Hubli Division,
District Dharwad, P.O. Hubli,
Karnataka 580 028.

2. Union of India,
(through Central Government
Standing Counsel).

3. State of Goa,
(Through Public Prosecutor). ... Respondents.

Shri J.A. Lobo, Advocate under Legal Aid Scheme for the Petitioner.

Respondent No.1 absent.

CORAM: N.A. BRITTO, J.

DATE: 12TH APRIL, 2004.

ORAL JUDGMENT:

Heard learned Advocate Shri Lobo on behalf of the Appellant/Complainant. The respondent no.1/accused has chosen to remain absent.

2. This is an appeal filed by the said complainant against the Order dated 22.09.2000 in Criminal Case No.436/N/89/B acquitting the accused/respondent under Section 20(6) of the Payment of Wages Act, 1936.

3. The authority under the Payment of Wages Act, 1936 namely Civil Judge, Senior Division, by Order dated 27.4.88 had directed the respondent/accused to pay to the said complainant unpaid wages of Rs.17,535/-. The said order was again reiterated by another Order dated 10.7.1989. By this order the said learned Civil Judge, Senior Division had directed the respondent/accused to deposit the said sum of Rs.17,535/- in the said Court within seven days or re-issue cheque in the said amount in the name of the complainant. After the said order and by letter of the same date namely 10.7.89 the Advocate of the respondent/accused informed the respondent/accused of the said order and along with the said letter dated 10.7.89 returned two cheques including Cheque No.A580035 dated 8.09.1988 for the said sum of Rs.17,535/-. The said cheques were received by one Shri Pinto on behalf of the said respondent/accused who by letter dated 12.7.89 again sent two cheques including the said cheque for Rs.17,535/- to the said Advocate along with the application requesting the said Advocate to file the same before the Court. However, the fact remains that the Advocate Shri Navelcar did not deposit the said cheques along with the application. The complainant filed the said complaint on or about

26.8.89 under Section 20(6) of the said Act. The said complaint filed by the said complainant remained dormant for one reason or the other but before the process was issued in the said complaint the respondent/accused paid the said amount of Rs.17,535/- on 30.6.1998.

4. The question before the trial Court, and before this Court at present, is whether the respondent/accused had committed wilful neglect as contemplated by sub-section (6) of Section 20 of the said Act. Sub-Section (6) reads as follows :-

> " If any person fails or wilfully neglects to pay the wages of any employed person by the date fixed by the authority in this behalf, he shall, without prejudice to any other action that may be taken against him, be punishable with an additional fine which may extend to one hundred rupees for each day for which such failure or neglect continues. "

5. The learned trial Court has come to the conclusion that the statement recorded of the said Shri Pinto under Section 313 of the Code of Criminal Procedure as well as his evidence showed that there was no wilful neglect on the part of the accused/respondent. The word "willful" has been defined by Black's Law Dictionary as proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary. The word "neglect" has been defined in the same Dictionary as an omission to do or perform some work, duty or act or failure to perform or discharge a duty. It also means a designed refusal, indifference or unwillingness to perform one's duty. In other words, it was the duty of the complainant to have shown that there was deliberate attempt on the part of the respondent not to comply with the said order of the Court dated 10.7.89. In the case at hand, the respondent/accused did show his bonafides by handing over the cheques to their Advocate although the cheques were not issued strictly in accordance with the order of the said authority dated 10.7.89. The accused had made the payment to the said complainant even before the process in the complaint filed by him

was issued against the accused. In this case, even if there was a failure to make the payment, the same was not attributable to the conduct of the accused but that of the Advocate for which the accused could not be penalised. In my opinion the finding of the learned Trial Court that there was no neglect on the part of the accused/respondent could not be faulted with.

6. I therefore find that there is no merit in this appeal. The same therefore is hereby dismissed.

N.A.BRITTO, J.

sl.